



February 22, 2005

HOUSE BILL No. 1668

DIGEST OF HB 1668 (Updated February 21, 2005 1:36 pm - DI 92)

Citations Affected: IC 6-3.1; noncode.

Synopsis: Economic development tax incentives. Provides an alternative method for calculating the qualified research credit of a qualified advanced manufacturing company. Creates a certified advanced manufacturing investment tax credit. Creates a refundable advanced manufacturing job retention tax credit.

Effective: January 1, 2005 (retroactive).

Hinkle, Behning, Crawford, Bardon

January 19, 2005, read first time and referred to Committee on Ways and Means.
February 21, 2005, amended, reported — Do Pass.

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HB 1668—LS 7325/DI 51+



February 22, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1668

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3.1-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 1. ~~As used in this~~ **The following definitions apply throughout this chapter:**

(1) **"Automotive electronics" involves the techniques and equipment used to achieve automatic operation or control of equipment, a process, or a system.**

(2) "Base amount" means base amount (as defined in Section 41(c) of the Internal Revenue Code as in effect on January 1, 2001).

(3) "Base period Indiana qualified research expense" means base period research expense that is incurred for research conducted in Indiana.

(4) "Base period research expense" means base period research expense (as defined in Section 41(c) of the Internal Revenue Code before January 1, 1990).

(5) "Indiana qualified research expense" means qualified research

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expense that is incurred for research conducted in Indiana.

(6) "Qualified advanced manufacturing company" means any business entity that:

- (A) maintains one (1) or more manufacturing facilities in Indiana employing during each month of the taxpayer's taxable year at least two thousand five hundred (2,500) employees in full-time employment positions that pay on average more than four hundred percent (400%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent;**
- (B) is engaged primarily in the business of automotive electronics, aerospace, defense, robotics, or engineering design technology, manufacturing, or production; and**
- (C) has been designated as a qualified advanced manufacturing company by executive order of the governor.**

(7) "Qualified research expense" means qualified research expense (as defined in Section 41(b) of the Internal Revenue Code as in effect on January 1, 2001).

(8) "Pass through entity" means:

- (A) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);**
- (B) a partnership;**
- (C) a limited liability company; or**
- (D) a limited liability partnership.**

(9) "Research expense tax credit" means a credit provided under this chapter against any tax otherwise due and payable under IC 6-3.

(10) "Taxpayer" means an individual, a corporation, a limited liability company, a limited liability partnership, a trust, or a partnership that has any tax liability under IC 6-3 (adjusted gross income tax).

SECTION 2. IC 6-3.1-4-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec 2.5. (a) A qualified advanced manufacturing company that incurs Indiana qualified research expense in a particular taxable year may elect to calculate the research expense tax credit under this section instead of under section 2 of this chapter.

(b) An election under this section applies to the taxable year for which the election is made and all succeeding taxable years unless the election is revoked with the consent of the department. An election must be made in the manner and on the form prescribed

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by the department.

(c) Except as provided in subsection (d), the credit is equal to one percent (1%) multiplied by:

(1) the taxpayer's Indiana qualified research expenses for the taxable year; minus

(2) fifty percent (50%) of the taxpayer's average Indiana qualified research expenses for the three (3) taxable years preceding the taxable year for which the credit is being determined.

(d) If the taxpayer does not have Indiana qualified research expenses in any one (1) of the three (3) taxable years preceding the taxable year for which the credit is being determined, the credit under this section is equal to one percent (1%) of the Indiana qualified research expenses for the taxable year.

SECTION 3. IC 6-3.1-13-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 12. (a) The economic development for a growing economy board is established. The board consists of the following seven (7) members:

(1) The director or, upon the director's designation, the executive director of the department of commerce.

(2) The director of the budget agency.

(3) The commissioner of the department of state revenue.

(4) Four (4) members appointed by the governor, not more than two (2) of whom may be members of the same political party.

(b) The director shall serve as chairperson of the board. Four (4) members of the board constitute a quorum to transact and vote on the business of the board.

(c) The department of commerce shall assist the board in carrying out the board's duties under this chapter, ~~and~~ IC 6-3.1-26, **and IC 6-3.1-26.2.**

SECTION 4. IC 6-3.1-13-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]: Sec. 26. (a) The economic development for a growing economy fund is established to be used exclusively for the purposes of this chapter, ~~and~~ IC 6-3.1-26, **and IC 6-3.1-26.2**, including paying for the costs of administering this chapter, ~~and~~ IC 6-3.1-26, **and IC 6-3.1-26.2.** The fund shall be administered by the department of commerce.

(b) The fund consists of collected fees, appropriations from the general assembly, and gifts and grants to the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues

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from these investments shall be deposited in the fund.

(d) The money in the fund at the end of a state fiscal year does not revert to the state general fund but remains in the fund to be used exclusively for the purposes of this chapter. Expenditures from the fund are subject to appropriation by the general assembly and approval by the budget agency.

SECTION 5. IC 6-3.1-26.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Chapter 26.2. Advanced Manufacturing Investment and Job Retention Credits

Sec. 1. As used in this chapter, "advanced manufacturing jobs" means employment in automotive electronics (as defined in IC 6-3.1-4-1), aerospace, defense, robotics, or engineering design technology, manufacturing, or production that pays on average more than four hundred percent (400%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.

Sec. 2. As used in this chapter, "board" has the meaning set forth in IC 6-3.1-13-1.

Sec. 3. (a) As used in this chapter, "certified advanced manufacturing investment" means the amount of a qualified advanced manufacturing company's expenditures for:

- (1) the purchase of new manufacturing equipment and tooling;
- (2) the purchase of new computers, software, and related equipment;
- (3) costs associated with the modernization of existing manufacturing facilities;
- (4) onsite infrastructure improvements;
- (5) the construction of new manufacturing facilities;
- (6) costs associated with retooling existing machinery and equipment; and
- (7) costs associated with the construction of special purpose buildings and foundations for use in the advanced manufacturing sector;

that are certified by the board under this chapter as being eligible for the credit under this chapter.

(b) The term does not include expenditures made before January 1, 2005, or after December 31, 2009.

Sec. 4. As used in this chapter, "director" has the meaning set forth in IC 6-3.1-13-3.

Sec. 5. As used in this chapter, "full-time employee" has the

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1 meaning set forth in IC 6-3.1-13-4.

2 Sec. 6. As used in this chapter, "income tax withholdings"
3 means the total amount withheld under IC 6-3-4-8 by the taxpayer
4 during the taxable year from the compensation of employees.

5 Sec. 7. As used in this chapter, "qualified advanced
6 manufacturing company" means a taxpayer that:

7 (1) maintains one (1) or more facilities in Indiana employing
8 at least two thousand five hundred (2,500) full-time employees
9 in advanced manufacturing jobs during each of the twelve
10 (12) months preceding an application for a credit under this
11 chapter; and

12 (2) has been designated as qualified by executive order of the
13 governor.

14 Sec. 8. As used in this chapter, "qualified advanced
15 manufacturing project" means a multi-year program of investment
16 that:

17 (1) has a projected cost of at least seventy million dollars
18 (\$70,000,000); and

19 (2) is undertaken by a qualified advanced manufacturing
20 company at a location in Indiana for the purposes listed in
21 section 3 of this chapter.

22 Sec. 9. As used in this chapter, "state tax liability" means a
23 taxpayer's total tax liability incurred under IC 6-3-1 through
24 IC 6-3-7 (the adjusted gross income tax), as computed after the
25 application of all credits that under IC 6-3.1-1-2 are to be applied
26 before the credit provided by this chapter.

27 Sec. 10. As used in this chapter, "taxpayer" means an
28 individual, a corporation, a partnership, or other entity that has
29 state tax liability.

30 Sec. 11. The board may make credit awards under this chapter
31 to encourage advanced manufacturing investment and to foster
32 expansion and retention of advanced manufacturing jobs in
33 Indiana.

34 Sec. 12. A taxpayer that:

35 (1) is awarded a tax credit under this chapter by the board;
36 and

37 (2) complies with the conditions set forth in this chapter and
38 the agreement entered into with the board under this chapter;
39 is entitled to apply the credit against the taxpayer's state tax
40 liability in a taxable year.

41 Sec. 13. (a) A qualified advanced manufacturing company is
42 entitled to a credit against the taxpayer's state tax liability for a

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1 taxable year if the taxpayer makes a certified advanced
2 manufacturing investment in a qualified advanced manufacturing
3 project during that year.

4 (b) The amount of the credit to which a taxpayer is entitled is
5 the certified advanced manufacturing investment made by the
6 taxpayer during the taxable year multiplied by one percent (1%).

7 (c) A taxpayer may carry forward an unused credit under this
8 section for not more than three (3) consecutive taxable years
9 beginning with the taxable year after the taxable year in which the
10 taxpayer makes the certified advanced manufacturing investment.

11 (d) A taxpayer may carry forward a remainder for one (1) or
12 more different certified advanced manufacturing investments in
13 the same taxable year.

14 Sec. 14. (a) A qualified advanced manufacturing company that
15 proposes a qualified advanced manufacturing project may claim
16 a job retention tax credit under this section equal to one percent
17 (1%) of the taxpayer's income tax withholdings attributable to
18 full-time employees working in advanced manufacturing jobs at
19 the qualified advanced manufacturing project site.

20 (b) The duration of the tax credit shall be based on the number
21 of full-time advanced manufacturing jobs maintained at the
22 qualified advanced manufacturing project site during the term of
23 the credit, and shall be determined as follows:

24 (1) A credit shall be awarded for five (5) consecutive taxable
25 years to a taxpayer that maintains at least two thousand five
26 hundred (2,500) advanced manufacturing jobs at the qualified
27 advanced manufacturing project site.

28 (2) A credit shall be awarded for four (4) consecutive taxable
29 years to a taxpayer that maintains at least two thousand two
30 hundred fifty (2,250) but less than two thousand five hundred
31 (2,500) advanced manufacturing jobs at the qualified
32 advanced manufacturing project site.

33 (3) A credit shall be awarded for three (3) consecutive taxable
34 years to a taxpayer that maintains at least two thousand
35 (2,000) but less than two thousand two hundred fifty (2,250)
36 advanced manufacturing jobs at the qualified advanced
37 manufacturing project site.

38 (c) If during the term of the credit the number of employees
39 drops below the amount required in subsections (b)(1), (b)(2), or
40 (b)(3), the duration of the credit shall be adjusted accordingly.

41 (d) The credit amount claimed for a taxable year under this
42 section may exceed the taxpayer's state tax liability for the taxable

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year, in which case the excess shall be refunded to the taxpayer.

Sec. 15. (a) A qualified advanced manufacturing company may apply to the board to enter into an agreement for a tax credit under:

- (1) section 13 of this chapter;
- (2) section 14 of this chapter; or
- (3) both sections 13 and 14 of this chapter.

(b) The director shall prescribe the form of the application.

Sec. 16. After receipt of an application, the board may enter into an agreement with the applicant for a tax credit under section 13 or section 14 of this chapter, or both, if the board determines that all the following conditions exist:

- (1) The taxpayer has prepared a plan for the use of credits under this chapter for a qualified advanced manufacturing project.
- (2) The qualified advanced manufacturing project will result in the growth or retention of full-time advanced manufacturing jobs in Indiana.
- (3) The qualified advanced manufacturing project is economically sound and will benefit the citizens of Indiana by strengthening the economy of Indiana.
- (4) Receiving the tax credit is a major factor in the taxpayer's decision to go forward with the qualified advanced manufacturing project.
- (5) The average wage that will be paid by the taxpayer to its employees at the site of the qualified advanced manufacturing project after the credit is given will be at least equal to four hundred percent (400%) of the hourly minimum wage under IC 22-2-2-4 or its equivalent.
- (6) The total cost of the qualified advanced manufacturing project will be at least seventy million dollars (\$70,000,000).
- (7) The qualified advanced manufacturing project will be completed within five (5) consecutive years, including the first year for which the credit is granted.
- (8) One (1) or more political subdivisions in which the qualified advanced manufacturing project is located have agreed to provide substantial financial support to the qualified advanced manufacturing project.

Sec. 17. The board shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all the following:

- (1) A detailed description of the qualified advanced

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1 manufacturing project that is the subject of the agreement.

2 (2) The first taxable year for which the credit may be claimed.

3 (3) The amount of the taxpayer's state tax liability in the
4 taxable year that immediately preceded the first taxable year
5 in which the credit may be claimed.

6 (4) The maximum tax credit amount that will be allowed for
7 each taxable year.

8 (5) A requirement that the taxpayer shall maintain operations
9 at the qualified advanced manufacturing project site for at
10 least ten (10) years, including the term of the tax credit.

11 (6) A requirement that the taxpayer shall pay an average
12 wage to its advanced manufacturing employees at the
13 qualified advanced manufacturing project site in each taxable
14 year that a tax credit is available that equals at least four
15 hundred percent (400%) of the hourly minimum wage under
16 IC 22-2-2-4 or its equivalent.

17 (7) A requirement that the taxpayer make at least seventy
18 million dollars (\$70,000,000) in certified advanced
19 manufacturing investment at the qualified advanced
20 manufacturing project site before December 31, 2009.

21 (8) For a taxpayer awarded a certified advanced
22 manufacturing investment credit under section 13 of this
23 chapter, a requirement that the taxpayer maintain at least
24 two thousand five hundred (2,500) full-time employees in
25 advanced manufacturing jobs in Indiana during the term of
26 the tax credit.

27 (9) For a taxpayer awarded an advanced manufacturing jobs
28 retention credit under section 14 of this chapter, a
29 requirement that the taxpayer maintain:

30 (A) at least two thousand five hundred (2,500) advanced
31 manufacturing jobs at the qualified advanced
32 manufacturing project site during the term of the credit if
33 the credit is awarded for five (5) years;

34 (B) at least two thousand two hundred fifty (2,250)
35 advanced manufacturing jobs at the qualified advanced
36 manufacturing project site during the term of the credit if
37 the credit is awarded for four (4) years; or

38 (C) at least two thousand (2,000) advanced manufacturing
39 jobs at the qualified advanced manufacturing project site
40 during the term of the credit if the credit is awarded for
41 three (3) years; and

42 a requirement that the taxpayer maintain at least two

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thousand (2,000) advanced manufacturing jobs at the qualified advanced manufacturing project site for at least ten (10) years, including the term of the tax credit.

(10) Any other performance conditions that the board determines are appropriate.

Sec. 18. (a) If the director determines that a taxpayer that has received a credit under this chapter is not complying with the requirements of the tax credit agreement or all the provisions of this chapter, the director shall, after giving the taxpayer an opportunity to explain the noncompliance, notify the department of commerce and the department of state revenue of the noncompliance and request an assessment.

(b) The department of state revenue, with the assistance of the director, shall state the amount of the assessment, which may not exceed the sum of:

(1) fifty percent (50%) of any credits previously awarded under section 13 of this chapter; and

(2) one hundred percent (100%) of any credits previously awarded under section 14 of this chapter.

(c) After receiving the notice, the department of state revenue shall make an assessment against the taxpayer under IC 6-8.1.

Sec. 19. Notwithstanding the other provisions of this chapter, a taxpayer is not entitled to a credit for a certified advanced manufacturing investment made after December 31, 2009. However, this section may not be construed to prevent a taxpayer from carrying an unused tax credit attributable to a certified advanced manufacturing investment made before January 1, 2010, forward to a taxable year beginning after December 31, 2009, in the manner provided by section 13 of this chapter.

SECTION 6. [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)] IC 6-3.1-4-1, as amended by this act, and IC 6-3.1-4-2.5 and IC 6-3.1-26.2, both as added by this act, apply only to taxable years beginning after December 31, 2004.

SECTION 7. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1668, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 2, delete "ten" and insert "**one**".

Page 3, line 3, delete "(10%)" and insert "**(1%)**".

Page 3, line 13, delete "five percent (5%)" and insert "**one percent (1%)**".

Page 6, line 6, delete "twenty" and insert "**one**".

Page 6, line 7, delete "(20%)." and insert "**(1%).**".

Page 6, line 17, delete "sixty" and insert "**one**".

Page 6, line 18, delete "(60%)" and insert "**(1%)**".

and when so amended that said bill do pass.

(Reference is to HB 1668 as introduced.)

ESPICH, Chair

Committee Vote: yeas 19, nays 0.

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